

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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CARLOS ZELAYA, et al.,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	08 Civ. 2933 (LMM)
	:	
MADISON SQUARE GARDEN, L.P., et. al,	:	<b>NOTICE OF MOTION</b>
	:	
Defendant.	:	
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**MOTION BY DEFENDANT MADISON SQUARE GARDEN, L.P.  
TO DISMISS COMPLAINT**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Madison Square Garden, L.P. ("MSG") moves this Court for an Order dismissing the claims against MSG with prejudice. As set forth in the accompanying memorandum,

1. This is a Dram Shop case in which plaintiffs' complaint alleges in count I that Madison Square Garden, L.P. has certain common-law duties to protect intoxicated patrons from injuring third parties away from Madison Square Garden, L.P.'s premises.
2. The common law does not impose upon a seller of alcoholic beverages the duty to protect intoxicated patrons from injuring third parties away from its premises.
3. The complaint further alleges in counts IV-VI that Madison Square Garden, L.P. is liable for wrongful death, survivorship, and lost consortium. These common law claims are not cognizable for the same reason.
4. Additionally, damages for lost consortium, requested by plaintiffs in count VI, are never recoverable in a Dram Shop Action.

Defendant Madison Square Garden, L.P. is submitting herewith a memorandum of law in

support of this motion.

June 2, 2008

Respectfully submitted,



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MS-2727

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Carlos Zelaya, et. al, :  
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 Plaintiff, :  
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 Madison Square Garden, L.P. et. al, :  
 :  
 Defendant.

**ORDER REGARDING MOTION BY DEFENDANT  
MADISON SQUARE GARDEN L.P. TO DISMISS COMPLAINT**

Pending before the Court is the Motion by Defendant Madison Square Garden L.P. (“MSG”) to Dismiss Plaintiffs’ Complaint, joined by defendant Cablevision. After consideration of the reasons in support thereof, and in opposition thereto, it is hereby

**ORDERED, ADJUDGED, AND DECREED** that Defendant MSG’s motion be and is hereby **GRANTED**, and counts IV, V, and VI are dismissed with prejudice.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant MSG’s motion to dismiss count I is **GRANTED**, and count I is hereby **DISMISSED** with leave to replead without the allegations of common law duties in paragraphs 34-36 of the complaint.

**SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2008.

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Judge Lawrence M. McKenna  
United States District Court

**CERTIFICATE OF SERVICE**

Robert Candella, pursuant to 28 USC 1746, hereby declares under penalty of perjury, that on the 2nd day of June, 2008, I caused the accompanying motion to be served electronically via the court's CM/ECF system as well as via United States First Class Mail.

A handwritten signature in black ink, appearing to read "Candella", is written over a horizontal line.

Robert Candella